

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

**EDWARD J. NICHOLAS,**  
**Plaintiff,**  
**v.**  
**DONALD HEFFNER, et al.,**  
**Defendants.**

**C.A. No. 06-200 Erie  
District Judge McLaughlin  
Magistrate Judge Baxter**

## ORDER

On September 6, 2006, Plaintiff Edward J. Nicholas, a state prisoner appearing *pro se*, filed the instant civil rights action. This matter was assigned to United States District Judge Sean J. McLaughlin and was referred to United States Magistrate Judge Susan Paradise Baxter for report and recommendation in accordance with the Magistrates Act, 28 U.S.C. § 636(b)(1), and Rules 72.1.3 and 72.1.4 of the Local Rules for Magistrates.

On October 3, 2006, Magistrate Judge Baxter issued a Report and Recommendation recommending that Plaintiff's Complaint be dismissed without prejudice to his right to pay the full filing fee of \$350.00 before October 23, 2006. [Document # 7]. Plaintiff appealed this Report and Recommendation to the Third Circuit Court of Appeals, pursuant to a Notice of Appeal that was filed on October 5, 2006. [Document # 9].

By Order dated March 28, 2007, the Third Circuit Court dismissed Plaintiff's appeal for lack of appellate jurisdiction. [Document # 17]. On the same date, this Court issued an Order requiring Plaintiff to pay the full filing fee of \$ 350.00 by April 11, 2007, or suffer dismissal of this case as recommended by Magistrate Judge Baxter in her Report and Recommendation dated October 3, 2006. [Document # 18]. Rather than pay the filing fee as required by this Court's Order, Plaintiff appealed this Court's Order to the Third Circuit Court of Appeals by Notice of Appeal dated April 2, 2007. [Document # 19]. This appeal remains pending; however, in that the appeal is interlocutory, this Court retains jurisdiction to take action on the Report and Recommendation dated October 3, 2006, to which no objection has been filed with this Court.

See Mondrow v. Fountain House, 867 F.2d 798 (3d Cir. 1989); Sheet Metal Workers International v. Herre Brothers, Inc., 198 F.3d 391, 394 (3d Cir. 1999).

AND NOW, this 18<sup>th</sup> day of April, 2007;

Following a *de novo* review of the record in this case, and in consideration of the fact that Plaintiff has failed to comply with this Court's Order to pay the full filing fee in this case by April 11, 2007, IT IS HEREBY ORDERED that the Report and Recommendation by Magistrate Judge Baxter, dated October 3, 2006, is adopted as the opinion of this Court, and this case is dismissed.

IT IS FURTHER ORDERED that the Clerk of Courts close this case.

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SEAN J. MCLAUGHLIN  
UNITED STATES DISTRICT JUDGE\_\_\_\_\_

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cc: The Honorable Susan Paradise Baxter  
Chief United States Magistrate Judge